

CRONUS PARTNERS

Memorandum

To: Barnes

From: Ken Leung

Re: Friday Update

Date: May 6, 2019

Barnes,

I have tried to capture what we discussed on Friday, but I would like your take if what I have written is correct. Additionally, if you would so good to elaborate on my questions in **bold**, I would be very grateful.

Thanks,

Ken

Update

In March 2019, the D.C. Circuit Court of Appeals left in place the October 2020 deadline for CCR impoundments to cease receiving CCR after triggering a closure order over the objections of a coalition of environmental groups, affirming EPA's contention that an earlier closure date would have disruptive consequences. While this decision is a significant victory for the electric utility industry, it is our understanding that as the EPA undertakes a new rulemaking to determine if this is an appropriate time frame to initiate closure, that it is possible that this deadline might be shortened by as much as six months or to May 2020. **(Question: What would the rational be to shorten the time frame to initiate closure if it has already been determined there would be disruptive consequences if the deadline is not October 2020?)**

By early next year, the EPA will issue the balance of the Phase I determinations, dealing with beneficial use of CCR **(Question: What are the outstanding issues?)** and a structure for a federal permit program. **(Question: you mentioned 3 determinations, but I assume 1 relates to the closure deadline: correct?)** In addition, determinations will be issued regarding the handling of non-CCR waste streams **(Question: What are the outstanding issues?)** and non-synthetic lined impoundments, i.e. a top a non-impermeable clay.

Finally, under Phase 2, another beneficial use determination will be issued during the summer of 2020 **(Question: What are the outstanding issues?)**. In actuality, Phase 2 is a misnomer as almost all the remaining determinations are under Phase 1.

It might be pointed out that the EPA believes that the majority of CCR regulations are largely intact and for the most part is being complied with by the utility industry. There are some utilities that are not, however, but with no funding, the EPA is not in the position to oversee or enforce the CCR regulations **(Question: I assume all the public utilities are attempting compliance – without being specific, who might be the violators – cooperatives and regional coal-fired power producers?)**.

On the political front, it is interesting to note that while the Administration has not attempted to water down existing CCR legislation, other than extending the aforementioned closure deadline to October 2020, thus allowing regulations to move forward, the recent change in the House of Representatives has prompted questions whether EPA require additional funding. If monies are appropriated and eventually disbursed, the CCR cleanup process could accelerate, as up to now, state and/or citizen-initiated lawsuit against non-complying coal-fired power plants have been virtually non-existent.

If there are any questions or comments, please call 212-658-0396 (office), (cell), or email kleung@cronuspartners.com. Ex. 6 Personal Privacy (PP)